IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1912 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

POONAMCHAND NANALAL SONI-DECD.THRO'HEIRS AND L.R.

Versus

VADILAL NANALAL SONI

Appearance:

MR BS PATEL for the Petitioner.

MRS RANJAN B PATEL for Petitioner No. 1/1-1/7-1/7

MR AJ SHASTRI for Respondent No. 1-2

RULE SERVED for Respondent No. 3-4

Mr.L.R. Pujari, Assistant GOVERNMENT PLEADER, for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/08/2004

ORAL JUDGEMENT

The heirs and legal representatives of the

deceased original plaintiff of Regular Civil Suit No.23 of 1994 are the petitioners herein. The said suit is filed before the Court of Civil Judge (Junior Division), Halol. The said suit is filed by the plaintiff for a declaration and injunction.

In the said suit, the Court Fee Inspector submitted his report under Section 12(3) of the Court Fees Act. As per the said report, the plaintiffs have filed the present suit for a declaration that they are the owners and are in possession of house, bearing No.534, situated at Bazaar Road, Kanjari, and that the defendant has no right to make any constructions in the disputed property. The Court Fee Inspector, in his report, found that the valuation put by the plaintiff for the purpose of payment of court fee is inadequate and the suit in question would fall under Section 6(iv)(d) of the Bombay Court Fees Act. The report is given on the basis of the averment in the plaint, by which the plaintiff has sought a declaration in connection with the property in question.

The Court Fee Inspector has given detailed reasons in his report for coming to the conclusion that the court fee affixed is inadequate.

The trial Judge accepted the said report and by passing orders below Exhibits 28 and 80, came to the conclusion that as per paragraph 5 of relief clause 8 of the plaint, at Exhibit 1, it is prayed that it should be declared that the plaintiff is the owner of the suit property. Once such declaration is sought for, in my view, the trial court is absolutely justified in coming to the conclusion that the fixed court fee stamp affixed on the plaint is not sufficient and accordingly, the plaintiff was ordered to affix the deficit court fee. In my view, the said order is not required to be interfered with by this Court under Section 115 of the Code of Civil Procedure, as, it cannot be said that the trial court has committed any error of law or of jurisdiction in passing the impugned order.

The petition is, therefore, dismissed. Rule is discharged. No costs.

Mr.B.S. Patel, learned Advocate for the applicants, however, pointed that the suit is already disposed of. However, at the time when the matter was admitted, this Court has passed the following order :-

" ... ...

Rule. Trial court will proceed with the suit. However, the petitioner will furnish an undertaking before the trial court that in case revision application is rejected he will comply with the order of the trial court and deposit the court fees. The undertaking may be filed before the trial court within a period of eight weeks. A copy of this order may be sent to the trial court.

... ..."

In that view of the matter, now, the plaintiff is directed to deposit the deficit court fees in view of the undertaking given and it will be open for the State to recover the amount of court fees in accordance with law.

Writ to be sent to the trial court forthwith.

26th August, 2004 (P.B. Majmudar, J.)

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(apj)